

REMARKS

In the Restriction Requirement dated January 24, 2006, the Examiner asserts that the Response to Restriction Requirement mailed October 24, 2005 was not fully responsive because Applicant failed to elect a single disclosed species for prosecution on the merits. The Examiner is respectfully requested to consider that in the Response to Restriction Requirement mailed on October 24, 2005, Applicant elected with traverse specie VI from species I-VI, elected with traverse specie D from species A-F, and elected with traverse specie 1 from species 1-9. Thus, it is unclear to Applicant's Representative how the Response to Restriction Requirement mailed October 24, 2005 is not fully responsive.

In a voice mail message from the Examiner on February 23, 2006, which was responsive to Applicant's Representative request for clarification on the alleged omission(s) in the Response to Restriction Requirement mailed October 24, 2005, the Examiner requested cancellation of the nonelected species. However, M.P.E.P. § 821 states that all claims that the examiner holds as not being drawn to elected subject matter are withdrawn from further consideration by the examiner (emphasis added).

Accordingly, it is Applicant's position that the Response to Restriction Requirement mailed on October 24, 2005 was fully responsive.

RESPONSE TO RESTRICTION REQUIREMENT

Serial Number: 10/788,906

Filing Date: February 27, 2004

Title: METHOD AND APPARATUS FOR DEVICE CONTROLLED GENE EXPRESSION

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Dkt: 279.696US1

The Examiner is invited to telephone Applicant's attorney at (612) 373-6959 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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By their Representatives,

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Date

February 27, 2006

By

Janet E. Embretson
Reg. No. 39,665

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: MS-AMENDMENT, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 24 day of February, 2006.

Name

Paula Suchy

Signature

Paula Suchy